

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--------------------------|-------------|---------------------|
| DAVID SOTO, |) | |
| |) | |
| | Plaintiff, |) No. 1:20-cv-01805 |
| |) | |
| v. |) | |
| |) | |
| CITY OF CHICAGO, et al., |) | Jury Trial Demanded |
| |) | |
| | Defendants. |) |

**DEFENDANTS' JOINT MOTION TO
STAY THE DUE DATE FOR ITS RESPONSIVE
PLEADING TO PLAINTIFF'S SUPPLEMENTAL COUNT VI**

Defendants, through their respective counsel, hereby requests to stay the due date for the City's responsive pleading to Plaintiff's Supplemental Count VI until the resolution of the City's Motion to Dismiss Plaintiff's Complaint. In support of this motion, the Defendants state as follows:

1. Plaintiff filed his Complaint on March 3, 2020 in the Circuit Court of Cook County (the, "Complaint") and was later removed to the Northern District of Illinois. Upon an agreed motion, the City's initial answer or responsive pleading to the Complaint was due on May 4, 2020.
2. On May 4, 2020, the City filed its Motion to Dismiss the Complaint. Dkt. No. 22.
3. Plaintiff filed his Response to the Motion to Dismiss on June 24, 2020, and filed a motion seeking to supplement the Complaint by adding a sixth count. Dkt. Nos. 48 and 49.
4. On July 1, 2020, this Court denied without prejudice Plaintiff's motion to supplement the Complaint. Dkt. No. 54.
5. On July 10, 2020, the City filed its reply in support of its Motion to Dismiss. Dkt. No. 57. The parties are currently awaiting a ruling on the Motion to Dismiss.
6. On August 3, 2020, Plaintiff filed his Motion for Leave to File Revised Supplemental Count VI to Complaint. Dkt. No. 68. That motion was granted on August 4, 2020.

Dkt. No. 69. Plaintiff subsequently filed his Revised Supplemental Count VI to Complaint. Dkt. No. 71.

7. Upon information and belief, the Defendants' answer or responsive pleading to Plaintiff's Revised Supplemental Count VI to the Complaint is on or before August 18, 2020. While Plaintiff's pleading is titled a "Supplemental Pleading" it appears to be more appropriately considered an attempt to amend Complaint to add another count. Federal Rules of Civil Procedure Rule 15(d) requires that a supplemental pleading sets out "any transaction occurrence, or event that happened after the date of the pleading to be supplemented." (emphasis added). Plaintiff's Supplemental Count VI to the Complaint contains only allegations from before March 3, 2020 and therefore cannot be considered a Rule 15(d) supplemental pleading. Accordingly, Plaintiff's proposed Count IV appears to be a partial amendment to the Complaint rather than a supplemental pleading. Rule 15(a)(3) states that the time to respond to such a pleading is 14 days after service of such pleading.

8. This due date is potentially before the resolution of the currently pending Motion to Dismiss. If the Defendants were required to answer or otherwise plead, this could result in multiple pending Motions to Dismiss the Complaint at the same time. Alternatively, if there is a ruling prior to the filing of a responsive pleading on the newly filed count, Defendants would like to assess that ruling prior to deciding next steps and appropriate strategy.

9. Therefore, the Defendants request that the due date for the Defendants' answer or responsive pleading be stayed pending the resolution of the currently pending Motion to Dismiss. This request streamlines the proceedings. Defendants seeks full dismissal of Plaintiff's initial Complaint, the Court may order that Plaintiff amend his initial pleading. In such a case, requiring the Defendants to answer or otherwise plead to a single Complaint rather than multiple filings for

different counts would be more prudent. This request is in the interest of judicial economy and will not prejudice any party.

10. Alternatively, if a stay is not granted Defendants request a 30 day extension to file a responsive pleading to Plaintiff's newly added Count VI.

11. Counsel for Defendants City of Chicago, David Salgado, Rocco Pruger, Benjamin Martinez, Richard Mostowski, and Xavier Elizondo have reviewed this motion and join in the requests herein.

WHEREFORE, the Defendants respectfully request this Court to stay its due date to answer or otherwise plead to Plaintiff's Revised Supplemental Count VI until the resolution of the City's Motion to Dismiss Plaintiff's Complaint, or in the alternative, for an additional thirty days to file an answer or otherwise plead to Plaintiff's Revised Supplemental Count VI to Complaint.

Dated: August 18, 2020

[Signature Page Follows]

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I caused the foregoing document to be filed with the Court's CM/ECF system, which provided electronic notice and a copy of the same to all counsel of record.

/s/ Helen C. O'Shaughnessy